



9110-04-P

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

#### **33 CFR Part 165**

**[Docket Number USCG-2018-1002]**

**RIN 1625-AA00**

**Safety Zone; Arthur Kill and Old Place Creek, Elizabeth, NJ and Staten Island, NY**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary safety zone for navigable waters within a 500-yard radius of the old Goethals Bridge Pier C on the Staten Island, NY side of the Federal navigation channel. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by underwater explosives demolition of Pier C. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port New York and New Jersey or a designated representative.

**DATES:** This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through December 31, 2018. For the purposes of enforcement, actual notice will be used from November 11, 2018 through [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2018-1002 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Mr. Craig Lapiejko, Waterways Management, First Coast Guard District; telephone (617) 223-8351, email Craig.D.Lapiejko@uscg.mil. You may also call or email Mr. Jeff Yunker, Waterways Management Division, U.S. Coast Guard Sector New York, telephone (718) 354-4195, email Jeff.M.Yunker@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port New York and New Jersey
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
First District	USCG First District Bridge Administration
NPRM	Notice of proposed rulemaking
PANYNJ	Port Authority of NY and NJ
RNA	Regulated Navigation Area
§	Section
TFR	Temporary Final Rule
U.S.C.	United States Code

**II. Background Information and Regulatory History**

On April 14, 2014 the Coast Guard published a NPRM entitled “Regulated Navigation Area; Arthur Kill, NY and NJ” in the Federal Register (79 FR 20851) that would allow the Coast Guard to enforce speed and wake restrictions and prohibit vessel traffic through the RNA during bridge replacement operations on the Goethals Bridge that could pose an imminent hazard to persons and vessels operating in the area. This proposed rule would also allow the Coast Guard to enforce navigation restrictions and prohibit vessel traffic during drilling, blasting, and dredging operations in support of the U.S. Army Corps of Engineers channel deepening project. Proposed work included underwater explosives demolition of the old Goethals Bridge Pier C. We received one comment on this proposed rule. It advocated notifying mariners of waterway closures at least

forty eight hours in advance, and that the closures remain in place only as long as required for safety purposes. It also recommended that the Coast Guard work to institute a queue system or other vessel movement scheme that allowed vessels moving with a flood tide to access the right of way in the restricted portion of the Arthur Kill.

On January 7, 2015, the Coast Guard published a TFR entitled “Regulated Navigation Area; Arthur Kill, NY and NJ” in the Federal Register (80 FR 00829) that allowed the Coast Guard to enforce speed and wake restrictions and prohibit vessel traffic through the RNA during bridge replacement operations on the Goethals Bridge that could pose an imminent hazard to persons and vessels operating in the area. This rule also allowed the Coast Guard to enforce navigation restrictions and prohibit vessel traffic during drilling, blasting, and dredging operations in support of the U.S. Army Corps of Engineers channel deepening project. The planned work still included underwater explosives demolition of the old Goethals Bridge Pier C. The Coast Guard said it would make every effort to notify mariners forty eight hours before a waterway closure, but that this may not always be possible due to many dynamic factors in the project. It also said it will meet with various other agencies to assess the need for a vessel queue system and administer a queue system if needed on a case by case basis by Vessel Traffic Service New York. This rule was in effect from January 7, 2015 until October 31, 2018.

On October 17, 2018 the PANYNJ contractor’s project manager notified the First District and Vessel Traffic Service New York that the previously scheduled underwater explosives demolition of the old Goethals Bridge Pier C below mean lower water had been delayed from late October 2018 until Sunday, November 11, 2018 at approximately 10:20 a.m. The contractor requested the Coast Guard create a safety zone to prohibit vessels and persons within a 500 yard radius of old Goethals Bridge Pier C from approximately 10 a.m. until 11:00 a.m. During this

approximate 60-minute window, no vessels or persons will be authorized within the safety zone unless authorized by the COTP New York and New Jersey.

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the schedule for the demolition of old Goethals Bridge Pier C was only recently finalized and extended past the original project completion date, and timely action is needed to respond to the potential safety hazards associated with this demolition project. It is impracticable and contrary to the public interest to publish an NPRM because we must establish this safety zone by November 11, 2018 to allow for the timely demolition of old Goethals Bridge Pier C and promote the safety of the public.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety hazards associated with underwater explosives demolition of old Goethals Bridge Pier C.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The COTP has determined that potential hazards associated with underwater explosives demolition tentatively scheduled on Sunday, November 11, 2018, will be a safety concern for anyone within a 500-yard

radius of the old Goethals Bridge Pier C. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone during underwater explosives demolition of the old Goethals Bridge Pier C.

#### **IV. Discussion of the Rule**

This rule establishes a safety zone from 10:00 a.m. on November 11, 2018 through 11:59 p.m. on December 31, 2018. This rule will be enforced from 10:00 a.m. until 11:00 a.m. on November 11, 2018. The safety zone covers all navigable waters of the Arthur Kill and Old Place Creek within approximately 500 yards of the old Goethals Bridge Pier C in approximate position 40°38'07.7"N, 074°11'46.4"W (NAD 83). The Coast Guard is publishing this rulemaking to be effective, and enforceable, through December 31, 2018 in case the project is delayed due to unforeseen circumstances.

The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the underwater remains of Pier C are demolished for eventual removal. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP New York and New Jersey or a designated representative.

The Coast Guard will notify the public and local mariners of this safety zone through the Local Notice to Mariners and/or Broadcast Notice to Mariners via VHF-FM marine channel 16 in advance of any scheduled enforcement period.

#### **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

##### **A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the following reasons: (1) The safety zone only impacts a small designated area of the Arthur Kill and Old Place Creek, (2) the zone will only be enforced for approximately 60 minutes during the underwater explosives demolition of the old Goethals Bridge Pier C, (3) vessels not constrained by their draft or length may still transit the Arthur Kill south of this safety zone, to, and from sea, via Raritan Bay Reaches and Sandy Hook Channel, (4) the demolition operations are scheduled on Sunday when commercial vessel traffic is less frequent, and (5) the demolition operations are scheduled in the late Fall when recreational vessel traffic is less frequent.

#### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is

consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting approximately 60 minutes that will prohibit entry within a 500 yard radius of the old Goethals Bridge Pier C during



underwater demolition. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water) Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

### **PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add §165.T01-1002 to read as follows:

§165.T01-1002 Safety Zone, Arthur Kill and Old Place Creek, Elizabeth, NJ and Staten Island, NY.

(a) *Safety zone boundaries.* The following is a safety zone: all waters of the Arthur Kill, from surface to bottom, bound by the following approximate positions: All waters south of a line drawn from 40°38'23.7"N, 074°11'43.3"W, thence to 40°38'19.0"N, 074°11'32.6"W, and all

waters north of a line drawn from 40°38'03.9"N, 074°12'07.8"W, thence to 40°37'54.9"N, 074°11'58.7"W (NAD 83).

(b) *Safety zone boundaries.* The following is a safety zone: all waters of the Old Place Creek, from surface to bottom, bound by the following approximate positions: All waters northwest of a line drawn from the following approximate positions: 40°37'52.7"N, 074°11'44.3"W, thence to 40°37'52.9"N, 074°11'42.7"W (NAD 83).

(c) *Definitions.* As used in this section:

*Designated representative* means any Coast Guard commissioned, warrant, petty officer, or designated Patrol Commander of the U.S. Coast Guard who has been designated by the Captain of the Port, Sector New York (COTP), to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF-FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

*Official patrol vessels* means any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP to enforce this section.

(d) *Regulations.* When this safety zone is enforced, the following regulations, along with those contained in 33 CFR 165.23 apply:

(1) During periods of enforcement, during active underwater explosives demolition, no person or vessel may enter or remain in the safety zones described in paragraphs (a) and (b) unless authorized by the COTP or the COTP's designated representative.

(2) Any vessels transiting must comply with all orders and directions from the COTP or the COTP's designated representative.

(3) Upon being hailed by a Coast Guard vessel by siren, radio, flashing light or other

means, the operator of the vessel must proceed as directed.

(4) Notwithstanding anything contained in this section, the Rules of the Road (33 CFR part 84—Subchapter E, inland navigational rules) are still in effect and must be strictly adhered to at all times.

(d) *Enforcement periods.* This regulation is enforceable 24 hours a day from 10:00 a.m. on November 11, until 11:59 p.m. on December 31, 2018, but will only be enforced during active underwater explosive demolition of the old Goethals Bridge Pier C. The underwater explosives demolition operations that will require enforcement of the safety zone regulations are tentatively scheduled to take place on November 11, 2018, from approximately 10:00 am until 11:00 a.m., unless delayed by weather, construction delays, or other unforeseen circumstances. The COTP will provide notice of the channel closure by appropriate means to the affected segments of the public. Such means of notification may include, but are not limited to, Broadcast Notice to Mariners and/or Local Notice to Mariners.

(1) Notice of suspension of enforcement: If enforcement is suspended, the COTP will provide a notice of the suspension of enforcement by appropriate means to the affected segments of the public. Such means of notification may include, but are not limited to, Broadcast Notice to Mariners and/or Local Notice to Mariners. Such notification will include the approximate date and time that enforcement will be suspended as well as the approximate date and time that

enforcement will resume.

(2) Violations of this regulation may be reported to the COTP at (718) 354-4353 or on VHF-Channel 16.

Dated: November 9, 2018

J. P. Tama,  
Captain, U.S. Coast Guard,  
Captain of the Port New York.

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